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**Board of Public Utilities**  
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**Newark, NJ 07102**  
**[www.nj.gov/bpu/](http://www.nj.gov/bpu/)**

**TELECOMMUNICATIONS**

IN THE MATTER OF THE BOARD INVESTIGATION )  
REGARDING THE RECLASSIFICATION OF INCUMBENT )  
LOCAL EXCHANGE CARRIER (ILEC) SERVICES AS )  
COMPETITIVE )

ORDER ON MOTION  
TO COMPEL

DOCKET NO. TX07110873

(SERVICE LIST ATTACHED)

BY COMMISSIONER FREDERICK F. BUTLER:

By Order dated November 28, 2007, in response to a request from Verizon New Jersey, Inc. ("Verizon"), the Board determined that it is appropriate at this time to conduct a full investigation of and hearing on the question of whether incumbent local exchange carrier (ILEC) provided mass market retail services should be declared competitive pursuant to N.J.S.A. 48:2:21-19 (b), after review and consideration of the necessary criteria.

On or about January 8, 2008, Sprint Communications Company, L.P., Sprint Spectrum, L.P., and Nextel of New York, Inc. (collectively "Sprint Nextel") filed a motion to compel Verizon. to provide the data, information, and documents requested by Sprint Nextel in the First and Second Set of Interrogatories and Requests for Production of Documents to Verizon served on December 13, 2007 and December 21, 2007, respectively. According to the motion, Verizon's discovery responses uniformly objected to every Interrogatory and Request for Production of Documents regarding service bundles (including local services), Verizon revenue data and information relating to Verizon's wireless/wireline services, and Verizon's regulated service costs. Verizon's purported basis for objecting was that such information is outside the scope of the proceeding. Sprint Nextel argues that Verizon's objections are without merit since its own testimony references such topics and the requested information relates to the statutory provisions applicable to Verizon's service reclassification request. According to Sprint Nextel, Verizon's objections are plainly a tactic to avoid meaningful scrutiny of its application, as evidenced by its service of discovery requests on Sprint Nextel asking nearly identical questions. Consequently, Sprint Nextel asks the Board to compel full responses to the interrogatories.

The motion goes on to state that Sprint Nextel requested that Verizon provide information regarding its bundled and wireless service offerings. Sprint-VNJ 12 – 14 specifically seek information regarding bundling of services. Sprint-VNJ 1, 2, 5, 6, 11, 15, 17, and 18 seek information pertaining to wireless services. Discovery requests 3, 4, 7 – 10, and 16 seek information pertaining to other services offered in Verizon's bundled service packages. In support of its motion, Sprint Nextel argues, among other things that:

- 1) Verizon's direct testimony relies on the very information Sprint Nextel seeks in the interrogatories regarding wireless services and bundled services in New Jersey;
- 2) In considering the three criteria set forth in N.J.S.A. 48:2.-21.19, Verizon's direct testimony claims a direct link between wireless/bundled services and the competitiveness of Verizon's retail mass market services, and therefore, discovery on such topics is appropriate;
- 3) Verizon's objections are undermined by its own discovery requests regarding Sprint Nextel's wireless services and bundled services;
- 4) Verizon's objections to Sprint Nextel's discovery requests inquiring into revenues Verizon receives from affiliated wireless/wireline entities are unfounded; and
- 5) Verizon must provide information related to whether its regulated services provide a subsidy to the services to be reclassified as competitive.

#### VERIZON'S RESPONSE

By letter dated January 18, 2008, Verizon responded to the motion by stating that Sprint Nextel's discovery requests generally seek irrelevant and inadmissible information regarding Verizon's intrastate access services, even though the Board has already made clear that access charges are beyond the scope of this proceeding. Moreover, according to Verizon, even if inquiry into Verizon's intrastate access services were somehow relevant, Verizon should not be put to the extraordinary burden of responding to these particular requests, which are overly broad and unduly burdensome. Given that Sprint Nextel has not set forth any adequate basis for requiring Verizon to engage in such a detailed, overly broad and unduly burdensome undertaking, the Board should deny the motion to compel responses to such requests. Accordingly, Verizon argues that Sprint Nextel's motion to compel should be denied in its entirety on the grounds that the underlying data requests are irrelevant, overly broad and unduly burdensome.

In support of its opposition, Verizon maintains, among other things, that:

- 1) **Sprint-VNJ-1, 3, 5, 7, 10 and 11:** These data requests ask Verizon about the annual intrastate switched access revenues obtained from assorted entities or about accounting for such revenues. Sprint Nextel's requests about intrastate access revenue are not likely to lead to the discovery of admissible evidence. The Board has already clarified-unambiguously – that "the issue of access charges" will not be addressed here. Sprint Nextel argues erroneously that questions about intrastate access revenue are "plainly relevant" because "any subsidies of Verizon's services to be reclassified as competitive" purportedly bear on "whether Verizon has an unfair advantage and whether barriers to entry consequently exist for other carriers." Sprint Nextel's contention is wrong. Verizon's intrastate access revenues are not relevant to determining whether its competitive services are subsidized. To evaluate whether Verizon's competitive services are subsidized, it would be necessary to determine whether competitive

services, not Verizon's intrastate access services, generate sufficient revenues to cover their costs. The revenues generated by non-competitive services, such as Verizon's intrastate access services, have no bearing whatsoever on whether competitive services cover their costs. In addition, the Board has previously ruled that cost of service studies are not required in reclassification proceedings.

- 2) **Sprint-VNJ – 2, 4, 6 and 8:** These data requests ask about the intrastate access rates Verizon charges to assorted entities. Like the above data requests, these requests (i) seek information that is neither relevant nor likely to lead to the discovery of relevant evidence; and (ii) are overly broad and unduly burdensome. Again, the Board has emphasized that the issue of access charges will not be addressed here.
- 3) **Sprint-VNJ - 9:** This detailed and overly burdensome request appears to be intended to understand the costs underlying Verizon's intrastate access services. As stated previously, the Board has deemed such services to be out side the scope of this proceeding, and thus these costs are irrelevant.
- 4) **Sprint-VNJ – 12 – 14:** These data requests ask Verizon to identify various bundled service offerings, and to specify the number of customers for each service plan. While Sprint Nextel correctly notes that Verizon has stated that its mass market retail services compete with packaged offerings, Sprint Nextel has not specifically articulated why the number of customers that subscribe to competitive Verizon plans is relevant here. Nevertheless, in the spirit of compromise and to avoid the further waste of Board and company resources, Verizon provides an amended response to most of these requests.
- 5) **Sprint-VNJ – 15 – 17:** Verizon New Jersey, which is the only Verizon entity participating in this case, does not have any documents regarding the purported "competitive or pricing advantage" that its wireless or long distance affiliates purportedly "enjoy" because "intrastate switched access fees are paid to the Verizon incumbent local exchange carriers." If the request seeks such documents (which may or may not exist) from Verizon's wireless or long distance affiliates, the motion should be denied because the affiliates are not parties to the case. The request for documents from Verizon affiliates operating in foreign jurisdictions relating to services in those jurisdictions should also be denied because: (i) the affiliates are not parties to this case; and (ii) information about services offered in other jurisdictions is not relevant. Finally, the motion should be denied because, again, the Board expressly stated that issues relating to Verizon's intrastate access charges will not be addressed in this proceeding.
- 6) **Sprint-VNJ – 18:** Verizon New Jersey, which is the only Verizon entity participating in this case, does not have any documents regarding the cost of providing end user wireless service. If the request seeks such documents (which may or may not exist) from Verizon's wireless affiliates, the motion should be denied because the affiliates are not parties to the case.
- 7) **Sprint-VNJ – 27-30:** These requests should be denied because they seek information that is irrelevant, outside the scope of the proceeding, publicly available or burdensome.

## SPRINT NEXTEL'S REPLY

On January 23, 2008, Sprint Nextel filed its reply urging the Board to instruct Verizon to promptly produce the requested discovery. In support of its position, Sprint argues that the standard governing the production of discovery is intentionally broad. Unlike the introduction of evidence at trial, the applicable standard governing discovery is whether the evidence sought is reasonably calculated to lead to the discovery of admissible evidence. This broad standard services the dual purpose of enabling parties to hone their own arguments and undermine their opponent's arguments. Under this standard, according to Sprint Nextel, discovery of information relevant to determining the existence of barriers to market entry is clearly required. Sprint additionally maintains that nothing in the Board's Order on Reconsideration leads to the conclusion that the Board will not consider whether access charges operate as barrier to entry, or whether any reclassification the Board may deem appropriate must necessarily be delayed to avoid violating New Jersey law. Creation of a full and complete record is central to the Board's duties, and only by ordering Verizon to cooperate in the discovery process will that goal be achieved.

## DISCUSSION

Upon review of the discovery requests at issue in this motion, and each response thereto, will grant the following request:

**Sprint-VNJ – 12(a):** Specify the number of customers for each service plan. Although Verizon has amended its response to Sprint-VNJ – 12(b), – 13 and – 14, and, as I rule below, these requests are adequately answered, no response has been given to 12(a). The information should be readily available to Verizon and is relevant in this matter because it has been claimed that bundled services act as substitutes. Therefore, this request fits within the traditional and appropriate scheme of discovery such that response to the request is appropriate and proper.

As has been noted in any number of discovery orders, discovery before an agency such as the Board is guided by the Uniform Administrative Procedure Rules, specifically N.J.A.C. 1:1-10.1 et seq. The purpose of discovery, as set out by N.J.A.C. 1:1-10.1, is to provide litigants access to "facts which tend to support or undermine their position or that of their adversary." Likewise, discovery is appropriate "if the information sought appears reasonably calculated to lead to the discovery of admissible evidence," N.J.A.C. 1:1-10.1(b), and the test for the judge in reviewing a discovery motion requires the judge to "weigh the specific need for the information, the extent to which the information is within the control of the party and matters of expense, privilege, trade secret and oppressiveness," N.J.A.C. 1:1-10.1(c).

I **HEREBY FIND** that the above discovery request is reasonably calculated to lead to the discovery of admissible evidence such that a response should be provided. Therefore, the motion as to that question is **HEREBY GRANTED**. Verizon shall provide response to Sprint Nextel no later than February 4, 2008.

Beyond this, however, the remaining requests enumerated in the motion fall outside this range of required answers. First, there are questions that have been adequately answered, and are complete, and they include Sprint – VNJ – 12(b), - 13, - 14, - 19, - 20, - 21, - 22, - 24, - 25, and – 26. Second, there are document requests that include documents that are available to the public through standard methods, and/or would be overly burdensome to produce. These include Sprint – VNJ- 23, - 29 and – 30. Finally, there are requests that ask for material which is outside the scope of this proceeding or which are overly burdensome, and include Sprint – VNJ – 1 through – 11, as well as - 15, - 16, - 17, - 18, - 27 and - 28. These demands are beyond the scope of discovery in this proceeding, and are HEREBY DENIED.<sup>1</sup>

This provisional ruling is subject to ratification or other alteration by the Board as it deems appropriate during the proceedings in this matter.

DATED: 1 - 29 - 08

BY:   
FREDERICK F. BUTLER  
COMMISSIONER

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<sup>1</sup> VNJ also raises the issue of Sprint Nextel's failure to abide by the "meet and confer" requirement of the rules for discovery issues. While there may or may not be merit to the allegations raised by VNJ, I have nevertheless ruled upon the motion. I would, however, ask all parties to consider the spirit of the "meet and confer" requirement in the future.

**IN THE MATTER OF THE BOARD INVESTIGATION REGARDING THE  
RECLASSIFICATION OF INCUMBENT LOCAL EXCHANGE CARRIER  
(ILEC) SERVICES AS COMPETITIVE**

**DOCKET NO. TX07110873**

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